

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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|----|-------------------------------|---|-----------------------------|
| 11 | BRIAN KEITH ABNER, |) | Case No.: 5:13-CV-01121-LHK |
| 12 | Plaintiff, |) | ORDER DISMISSING CASE |
| 13 | v. |) | WITHOUT PREJUDICE |
| 14 | FRANCISCO HERNANDEZ, SAN JOSE |) | |
| 15 | POLICE DEPARTMENT INTERNAL |) | |
| 16 | AFFAIRS, |) | |
| 17 | Defendants. |) | |

Plaintiff Brian Keith Abner filed the original complaint in this action on February 28, 2013 in the Southern District of New York. ECF No. 1. The case was subsequently transferred to the Northern District of California. ECF No. 6. Following transfer, Abner filed three amended complaints (ECF Nos. 9, 10, 12), the most recent of which was filed on April 18, 2013. ECF No. 12. Abner did not serve the defendants within 120 days of his most recent amended complaint, as required by Federal Rule of Civil Procedure 4(m).

A case management conference was held on June 19, 2013 at which Abner was ordered to serve the defendants by August 15, 2013. ECF No. 14. As of September 12, 2013, the defendants have still not been served.

Under Rule 4(m), a plaintiff's failure to serve the defendant within 120 days of filing the complaint is grounds for dismissal without prejudice absent a showing of good cause. *See* Fed. R.

1 Civ. P. 4(m). In light of Plaintiff's failure to serve the defendants, either within 120 days of filing
2 the complaint or within the extended deadline set by the Court, the Court hereby DISMISSES
3 Plaintiff's case without prejudice for failure to comply with Rule 4(m). The Clerk shall close the
4 file.

5 **IT IS SO ORDERED.**

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7 Dated: September 12, 2013

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Lucy H. Koh
LUCY H. KOH
United States District Judge